



California Regional Water Quality Control Board

Santa Ana Region



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Secretary for
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Arnold Schwarzenegger
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Naresh Varma
San Bernardino County
Department of Public Works
825 East Third Street
San Bernardino, CA 92415-0835

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE CACTUS BASIN NOS. 3 AND 3A ENHANCEMENT PROJECT, CITY OF RIALTO, SAN BERNARDINO COUNTY (ACOE REFERENCE NO. SPL -2008 - 00638)

Dear Mr. Varma:

On April 24, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for excavation and grading for Cactus Basin No. 3 in the City of Rialto¹. The related environmental documents, prepared pursuant to the California Environmental Quality Act ("CEQA"), were received on January 21, 2009 and February 9, 2009. Additional requested information was received on March 4, 2009.

This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description:	Excavation and grading of Cactus Basin Nos. 3 and 3A to their ultimate design depths. The project includes construction of dike, with a connecting drain and backup spillway, between the basins, and an un-grouted rip-rap chute extending from the invert of Cactus Channel to the bottom of Basin No. 3. Existing outfalls to the basins will be relocated to correspond to the new elevations. Excavated material will be sold over time as aggregate by the contractor completing the work. The rate of removal of aggregate from the project area will depend on market demand. With the exception of the eastern half of
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¹ A previous application had been received on September 13, 2004 but was denied without prejudice on September 8, 2005 due to incomplete information. Proposed outlet improvements for Basin 3A, at Baseline Road and a downstream portion of Rialto Channel, were previously issued Certification on March 21, 2003.

Basin 3A, the basins will be subject to periodic excavation of accumulated sediment². The project will take place within Section 34 of Township 1 North, Range 5 West, of the U.S. Geological Survey *Devore* and *Fontana, California*, 7.5-minute topographic quadrangle maps (34.121350 degrees N/ - 117.383539 degrees W).

Receiving water: Cactus Basin and Cactus Channel.

Fill area: 21.13 acres of permanent impact to an ephemeral drainage and flood control basin).

Dredge volume: Not applicable.

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 3.

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Hydro-seeding and silt-fences will be employed to control erosion from the basins' slopes.
- Additional Best Management Practices ("BMPs") will be specified in the project Storm Water Pollution Prevention Plan ("SWPPP").
- Basin slopes will be re-vegetated using appropriate native vegetation.

Offsite Water Quality Standards Mitigation Proposed:

- 45 acres of land, currently owned by San Bernardino County, will be set aside for preservation at the Cajon Wash Mitigation Bank operated in accordance with U.S. Army Corps of Engineers' guidelines.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order

² San Bernardino Valley Municipal Water District has proposed to use the basins for groundwater recharge, as described in the Final 1988 Environmental Impact Report for the Upper Cactus Basins. However, any discharges associated with groundwater recharge activities are not within the scope of this Certification.



No. R8-2002-0012, commonly known as the San Bernardino County Municipal Storm Water Permit. Order No. R8-2002-0012 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2009-0003, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant ("De Minimus") Threat to Water Quality. For more information, please review Order No. R8-2009-0003 at:
www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_03_deminimus_permit_wdr.pdf

Aggregate mining activities may require coverage under State Water Resources Control Board Water Quality Order No. 97-03-DWQ, "Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities, Excluding Construction Activities" ("Order No. 97-03-DWQ"). Order No. 97-03-DWQ is available at:
www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmnt.pdf

You have applied for a permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act, the City of Rialto certified an Environmental Impact Report ("EIR") for the proposed project on September 20, 1988. Subsequently, the San Bernardino County Board of Directors of the Flood Control District certified a Supplemental EIR on December 16, 2008.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR prepared by the lead agency in determining whether to approve a Section 401 Certification. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the EIR and Supplemental EIR prepared for the proposed project in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR and Supplemental EIR relating to water quality. Based on the mitigation proposed in the EIRs, and the conditions set forth in this Certification, impacts to water quality shall be reduced to a less than significant level and beneficial uses shall be protected. Thus, the Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level.



This 401 Certification is contingent upon the execution of the following conditions:

- 1) This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
- 2) A copy of this Certification and any subsequent amendments must be maintained at the project site as a denoted element of any Water Quality Management Plan ("WQMP") or SWPPP for the duration of work.
- 3) By August 31, 2011, the County of San Bernardino must submit evidence to the Executive Officer that the proposed 45-acre portion of the Cajon Wash Mitigation Bank has been set aside to the satisfaction of the U.S. Army Corps of Engineers and is in effect. In the interim period, the County must implement effective BMPs on the proposed mitigation site for the purpose of preserving the physical and biological integrity of the waters of the State contained thereon.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.



In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at:
www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Shannon Pankratz
Department of Fish and Game – Jeff Brandt
State Water Resources Control Board, Office of Chief Counsel – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8

